

Irene Karbelashvili, State Bar Number 232223
Law Office of Irene Karbelashvili
12 South First Street, Suite 413
San Jose, CA 95113
Telephone: (408) 295-0137
Fax: (408) 295-0142

Kenneth J. Pinto, State Bar Number 221422
Law Office of Kenneth J. Pinto
12 South First Street, Suite 713
San Jose, CA 95113
Telephone: (408) 289-1765
Fax: (408) 289-1754

Attorneys for RICHARD JOHNSON, Plaintiff

Filed

JAN 22 2013

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

RICHARD JOHNSON,
Plaintiff,

vs.

WHOLE FOODS MARKET
CALIFORNIA, INC., d/b/a WHOLE
FOODS MARKET; RITE AID
CORPORATION, d/b/a/ RITE AID;
COLG, L.P., a/k/a CORNERSTONE OF
LOS GATOS and DOES 1-20,
Defendants.

Case No.

CV 13- 0295

Civil Rights

PSG

**COMPLAINT FOR
PRELIMINARY AND
PERMANENT INJUNCTIVE
RELIEF AND DAMAGES:
DENIAL OF CIVIL RIGHTS AND
ACCESS TO PUBLIC
FACILITIES TO PHYSICALLY
DISABLED PERSONS, PER
FEDERAL AND CALIFORNIA
STATUTES (INCLUDING CIVIL
CODE §§ 51, 52, 54, 54.1, 54.3,
AND § 55; AND HEALTH &
SAFETY CODE §§ 19955 ET
SEQ.); INJUNCTIVE RELIEF
PER TITLE III, AMERICANS
WITH DISABILITIES ACT OF
1990**

Complaint for Preliminary and Permanent Injunctive Relief and Damages: Denial of Civil Rights and Access to Public Facilities to Physically Disabled Persons, Per Federal and California Statutes (Including Civil Code §§ 51, 52, 54, 54.1, 54.3, and § 55; and Health & Safety Code §§ 19955 et seq.); Injunctive Relief Per Title III, Americans with Disabilities Act of 1990

I. SUMMARY

1. This is a civil rights action by plaintiff Richard Johnson ("Johnson") for discrimination at the building, structure, facility, complex, property, land, development, and/or surrounding business complexes known as:

Whole Foods Market

15980 Los Gatos Boulevard

Los Gatos, California 95032

(hereafter "Whole Foods Facility")

Rite Aid

15920 Los Gatos Boulevard

Los Gatos, California 95032

(hereafter "Rite Aid facility")

Cornerstone of Los Gatos

15920-16000 Los Gatos Boulevard

Los Gatos, California 95032

(hereafter "Mall Facility")

(collectively, "Facilities")

2. Pursuant to the Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12101 *et seq.*), and related California statutes, Johnson seeks damages, injunctive and declaratory relief, and attorney fees and costs, against:

- Whole Foods Market California, Inc., a California corporation, d/b/a Whole Foods Market; (hereinafter the "Whole Foods Defendants");
- Rite Aid Corporation, a Delaware corporation, d/b/a Rite Aid (hereinafter the "Rite Aid Defendants");

Complaint for Preliminary and Permanent Injunctive Relief and Damages: Denial of Civil Rights and Access to Public Facilities to Physically Disabled Persons, Per Federal and California Statutes (Including Civil Code §§ 51, 52, 54, 54.1, 54.3, and § 55; and Health & Safety Code §§ 19955 *et seq.*); Injunctive Relief Per Title III, Americans with Disabilities Act of 1990

- ## II. JURISDICTION

3. This Court has original jurisdiction under 28 U.S.C. §§ 1331 and 1343 for ADA
4. Supplemental jurisdiction for claims brought under parallel California law--arising
e same nucleus of operative facts--is predicated on 28 U.S.C. § 1367.
5. Johnson's claims are authorized by 28 U.S.C. §§ 2201 and 2202.

6. All actions complained of herein take place within the jurisdiction of the United District Court, Northern District of California, and venue is invoked pursuant to 28 § 1391(b), (c).

7. The Whole Foods Defendants own, operate, manage, and/or lease the Whole Foods stores, and consist of a person (or persons), firm, and/or corporation.

9. The Cornerstone of Los Gatos Defendants own, operate, manage, and/or lease the facility, and consist of a person (or persons), firm, and/or corporation.

11. Johnson is a paraplegic who is unable to walk or stand, and requires the use of a wheelchair when traveling about in public. Consequently, Johnson is “physically disabled,”

1 as defined by all applicable California and United States laws, and a member of the public
2 whose rights are protected by these laws.

3 4 **V. FACTS**

5 12. The Whole Foods Facility is a sales or retail establishment, open to the public,
6 which is intended for nonresidential use and whose operation affects commerce.

7 13. The Rite Aid Facility is a sales or retail establishment, open to the public, which
8 is intended for nonresidential use and whose operation affects commerce.

9 14. The Mall Facility is a sales or retail establishment, open to the public, which is
10 intended for nonresidential use and whose operation affects commerce.

11 15. Johnson visited the Facilities and encountered barriers (both physical and
12 intangible) that interfered with--if not outright denied--his ability to use and enjoy the goods,
13 services, privileges, and accommodations offered at all of the facilities.

14 16. To the extent known by Johnson, the barriers at the Whole Foods Facility
15 included, but are not limited to, the following:

- 16 • Seating area in food court does not have ADA parking that prevents Johnson from
- 17 using it;
- 18 • Counter in food court is higher than 34" that makes it difficult for Johnson to reach it;
- 19 • Outside tables does not have ADA seating that makes them inaccessible to him;
- 20 • Counter seating does not have ADA seating that makes it inaccessible for Johnson
- 21 because it is too high;
- 22 • Restroom door sign does not have contrasting colors;
- 23 • No ADA sign on latch side of restroom door;
- 24 • No exit sign with Braille at exit door in food court area;
- 25 • Bathroom paper towels requires tight grasping and needs twisting to release the paper
- 26 towel;
- 27 • Coat hanger is higher than 48" that makes it difficult for Johnson to reach and use;

- 1 • No 48" space in front of WC making it difficult for Johnson to maneuver to transfer
- 2 from wheelchair to the toilet seat;
- 3 • Garbage can blocks clear floor space, thus making it difficult for Johnson to
- 4 maneuver;
- 5 • No 5' turning space in bathroom, thus making it difficult for Johnson to maneuver
- 6 within;
- 7 • No 28" min space between WC and sink thus making it difficult for Johnson to
- 8 maneuver to transfer to toilet seat;
- 9 • Rear grab bar is not 12- 24" from center of WC that makes for Johnson unusable;
- 10 • WC flush activator on narrow side of WC that makes it beyond Johnson's reach; it is
- 11 dangerous for him to reach above the WC and flush;
- 12 • There is no ADA sign on deli door that would indicate to Johnson that the area is
- 13 intended to be accessible to him.

14 These barriers prevented Johnson from enjoying full and equal access at the Whole
15 Foods Facility.

16 17. Johnson was also deterred from visiting the Whole Foods Facility because he
17 knew that the Whole Foods Facility's goods, services, facilities, privileges, advantages, and
18 accommodations were unavailable to physically disabled patrons (such as himself). He
19 continues to be deterred from visiting the Whole Foods Facility because of the future threats
20 of injury created by these barriers.

21 18. To the extent known by Johnson, the barriers at the Rite Aid Facility included, but
22 are not limited to, the following:

- 23 • Open register was blocked by display cases, thus making it inaccessible;
- 24 • Men's bathroom has no clear space on push side of the door due to cabinet thus;
- 25 making it difficult for Johnson to maneuver within
- 26 • Bathroom door opens at clear space of a sink making it dangerous for Johnson to use
- 27 it;

- Garbage can blocks the 60" clear space on pull side of the door making it impossible for Johnson to transfer from his wheelchair to the toilet seat.

These barriers prevented Johnson from enjoying full and equal access at the Rite Aid Facility.

19. Johnson was also deterred from visiting the Rite Aid Facility because he knew that the Rite Aid Facility's goods, services, facilities, privileges, advantages, and accommodations were unavailable to physically disabled patrons (such as himself). He continues to be deterred from visiting the Rite Aid Facility because of the future threats of injury created by these barriers.

20. To the extent known by Johnson, the barriers at the Mall Facility included, but are not limited to, the following:

- Side Parking access aisle has illegal built up curb ramps thus making dangerous for Johnson to dismount from his vehicle;
- Side Parking access aisle striping lines are over 36" distance;
- Side parking No "\$250" fine sign in parking areas;
- No truncated domes when path of travel cross vehicular path;
- No truncated domes on front curb cuts;
- Front parking No "\$250" fine sign in parking areas;
- No path of travel from public right of way;
- Parking slope has a slope over 2%- 3.9% making it dangerous for Johnson to use because the wheelchair can roll backwards while he is dismounting from his vehicle
- Curb ramp is not different in color from sidewalk;
- Curb top landing is blocked by carts making it unusable for Johnson;
- Curb side slope is over 10% -15.7% thus making it dangerous for Johnson;
- Curb slope is over 8.33% -9.8% thus making it dangerous for Johnson;
- Connecting path of travel from Rite Aid Facility to Whole Foods Facility has a ramp with no railings that prevents Johnson to pull himself up if he needs;

- 1 • Connecting path of travel from rite aid to whole foods has a ramp with 3% cross slope
- 2 that can cause Johnson to fall sideways;
- 3 • Parking count for both Rite Aid Facility and Whole Foods Facility appears low.

4 These barriers prevented Johnson from enjoying full and equal access at the Mall
5 Facility.

6 21. Johnson was also deterred from visiting the Mall Facility because he knew that
7 the Mall Facility's goods, services, facilities, privileges, advantages, and accommodations
8 were unavailable to physically disabled patrons (such as himself). He continues to be
9 deterred from visiting the Entire Brea Mall Facility because of the future threats of injury
10 created by these barriers.

11 22. Johnson also encountered barriers at the Facilities which violate state and federal
12 law, but were unrelated to his disability. Nothing within this Complaint, however, should be
13 construed as an allegation that Johnson is seeking to remove barriers unrelated to his
14 disability.

15 23. The Whole Foods Defendants knew that these elements and areas of the Whole
16 Foods Facility were inaccessible, violate state and federal law, and interfere with (or deny)
17 access to the physically disabled. Moreover, the Whole Foods Defendants have the financial
18 resources to remove these barriers from the Whole Foods Facility (without much difficulty or
19 expense), and make the Whole Foods Facility accessible to the physically disabled. To date,
20 however, the Whole Foods Defendants refuse to either remove those barriers or seek an
21 unreasonable hardship exemption to excuse non-compliance.

22 24. At all relevant times, the Whole Foods Defendants have possessed and enjoyed
23 sufficient control and authority to modify the Whole Foods Facility to remove impediments
24 to wheelchair access and to comply with the Americans with Disabilities Act Accessibility
25 Guidelines and Title 24 regulations. The Whole Foods Defendants have not removed such
26 impediments and have not modified the Whole Foods Facility to conform to accessibility
27 standards.

28 Complaint for Preliminary and Permanent Injunctive Relief and Damages: Denial of Civil Rights and Access to
Public Facilities to Physically Disabled Persons, Per Federal and California Statutes (Including Civil Code §§ 51,
52, 54, 54.1, 54.3, and § 55; and Health & Safety Code §§ 19955 et seq.); Injunctive Relief Per Title III, Americans
with Disabilities Act of 1990

1 25. The Rite Aid Defendants knew that these elements and areas of the Rite Aid
2 Facility were inaccessible, violate state and federal law, and interfere with (or deny) access to
3 the physically disabled. Moreover, the Rite Aid Defendants have the financial resources to
4 remove these barriers from the Rite Aid Facility (without much difficulty or expense), and
5 make the Rite Aid Facility accessible to the physically disabled. To date, however, the Rite
6 Aid Defendants refuse to either remove those barriers or seek an unreasonable hardship
7 exemption to excuse non-compliance.

8 26. At all relevant times, the Rite Aid Defendants have possessed and enjoyed
9 sufficient control and authority to modify the Rite Aid Facility to remove impediments to
10 wheelchair access and to comply with the Americans with Disabilities Act Accessibility
11 Guidelines and Title 24 regulations. The Rite Aid Defendants have not removed such
12 impediments and have not modified the Rite Aid Facility to conform to accessibility
13 standards.

14 27. The Cornerstone of Los Gatos Defendants knew that these elements and areas of
15 the Mall Facility were inaccessible, violate state and federal law, and interfere with (or deny)
16 access to the physically disabled. Moreover, the Cornerstone of Los gatos Defendants have
17 the financial resources to remove these barriers from the Mall Facility (without much
18 difficulty or expense), and make the Mall Facility accessible to the physically disabled. To
19 date, however, the Mall Defendants refuse to either remove those barriers or seek an
20 unreasonable hardship exemption to excuse non-compliance.

21 28. At all relevant times, the Cornerstone of Los Gatos Defendants have possessed
22 and enjoyed sufficient control and authority to modify the Mall Facility to remove
23 impediments to wheelchair access and to comply with the Americans with Disabilities Act
24 Accessibility Guidelines and Title 24 regulations. The Mall Defendants have not removed
25 such impediments and have not modified the Mall Facility to conform to accessibility
26 standards.

1 **VI. FIRST CLAIM**

2 **Americans with Disabilities Act of 1990**
 3 ***Denial of "Full and Equal" Enjoyment and Use***
 4 **(The Whole Foods Facility)**

5 29. Johnson incorporates the allegations contained in paragraphs 1 through 28 for this
 6 claim.

7 30. Title III of the ADA holds as a "general rule" that no individual shall be
 8 discriminated against on the basis of disability in the full and equal enjoyment (or use) of
 9 goods, services, facilities, privileges, and accommodations offered by any person who owns,
 10 operates, or leases a place of public accommodation. 42 U.S.C. § 12182(a).

11 31. The Whole Foods Defendants discriminated against Johnson by denying "full and
 12 equal enjoyment" and use of the goods, services, facilities, privileges or accommodations of
 13 the Whole Foods Facility during each visit and each incident of deterrence.

14 ***Failure to Remove Architectural Barriers in an Existing Facility***

15 32. The ADA specifically prohibits failing to remove architectural barriers, which are
 16 structural in nature, in existing facilities where such removal is readily achievable. 42 U.S.C.
 17 § 12182(b)(2)(A)(iv). The term "readily achievable" is defined as "easily accomplishable and
 18 able to be carried out without much difficulty or expense." *Id.* § 12181(9).

19 33. When an entity can demonstrate that removal of a barrier is not readily
 20 achievable, a failure to make goods, services, facilities, or accommodations available through
 21 alternative methods is also specifically prohibited if these methods are readily achievable. *Id.*
 22 § 12182(b)(2)(A)(v).

23 34. Here, Johnson alleges that the Whole Foods Defendants can easily remove the
 24 architectural barriers at the Whole Foods Facility without much difficulty or expense, and
 25 that the Whole Foods Defendants violated the ADA by failing to remove those barriers, when
 26 it was readily achievable to do so.

1 35. In the alternative, if it was not “readily achievable” for the Whole Foods
 2 Defendants to remove the Whole Foods Facility’s barriers, then the Whole Foods Defendants
 3 violated the ADA by failing to make the required services available through alternative
 4 methods, which are readily achievable.

5
 6 ***Failure to Design and Construct an Accessible Facility***

7 36. On information and belief, the Whole Foods Facility was designed or constructed
 8 (or both) after January 26, 1992-independently triggering access requirements under Title III
 9 of the ADA.

10 37. The ADA also prohibits designing and constructing facilities for first occupancy
 11 after January 26, 1993, that aren’t readily accessible to, and usable by, individuals with
 12 disabilities when it was structurally practicable to do so. 42 U.S.C. § 12183(a)(1).

13 38. Here, the Whole Foods Defendants violated the ADA by designing or
 14 constructing (or both) the Whole Foods Facility in a manner that was not readily accessible
 15 to the physically disabled public--including Johnson--when it was structurally practical to do
 16 so.

17 ***Failure to Make an Altered Facility Accessible***

18 39. On information and belief, the Whole Foods Facility was modified after January
 19 26, 1992, independently triggering access requirements under the ADA.

20 40. The ADA also requires that facilities altered in a manner that affects (or could
 21 affect) its usability must be made readily accessible to individuals with disabilities to the
 22 maximum extent feasible. 42 U.S.C. § 12183(a)(2). Altering an area that contains a facility’s
 23 primary function also requires adding making the paths of travel, bathrooms, telephones, and
 24 drinking fountains serving that area accessible to the maximum extent feasible. *Id.*

25 41. Here, the Whole Foods Defendants altered the Whole Foods Facility in a manner
 26 that violated the ADA and was not readily accessible to the physically disabled public--
 27 including Johnson--to the maximum extent feasible.

Failure to Modify Existing Policies and Procedures

42. The ADA also requires reasonable modifications in policies, practices, or procedures, when necessary to afford such goods, services, facilities, or accommodations to individuals with disabilities, unless the entity can demonstrate that making such modifications would fundamentally alter their nature. 42 U.S.C. § 12182(b)(2)(A)(ii).

43. Here, the Whole Foods Defendants violated the ADA by failing to make reasonable modifications in policies, practices, or procedures at the Whole Foods Facility, when these modifications were necessary to afford (and would not fundamentally alter the nature of) these goods, services, facilities, or accommodations.

44. Johnson seeks all relief available under the ADA (*i.e.*, injunctive relief, attorney fees, costs, legal expense) for these aforementioned violations. 42 U.S.C. § 12205.

45. Johnson also seeks a finding from this Court (*i.e.*, declaratory relief) that the Whole Foods Defendants violated the ADA in order to pursue damages under California's Unruh Civil Rights Act or Disabled Persons Act.

**VII. SECOND CLAIM
Disabled Persons Act
(The Whole Foods Facility)**

46. Johnson incorporates the allegations contained in paragraphs 1 through 45 for this claim.

47. California Civil Code § 54 states, in part, that: Individuals with disabilities have the same right as the general public to the full and free use of the streets, sidewalks, walkways, public buildings and facilities, and other public places.

48. California Civil Code § 54.1 also states, in part, that: Individuals with disabilities shall be entitled to full and equal access to accommodations, facilities, telephone facilities, places of public accommodation, and other places to which the general public is invited.

1 49. Both sections specifically incorporate (by reference) an individual's rights under
2 the ADA. *See* Civil Code § § 54(c) and 54.1 (d).

3 50. Here, the Whole Foods Defendants discriminated against the physically disabled
4 public--including Johnson--by denying them full and equal access to the Whole Foods
5 Facility. The Whole Foods Defendants also violated Johnson's rights under the ADA, and,
6 therefore, infringed upon or violated (or both) Johnson's rights under the Disabled Persons
7 Act.

8 51. *For each offense* of the Disabled Persons Act, Johnson seeks actual damages
9 (both general and special damages), statutory minimum damages of one thousand dollars
10 (\$1,000), declaratory relief, and any other remedy available under California Civil Code §
11 54.3.

12 52. She also seeks to enjoin the Whole Foods Defendants from violating the Disabled
13 Persons Act (and ADA) under California Civil Code § 55, and to recover reasonable
14 attorneys' fees and incurred under California Civil Code §§ 54.3 and 55.

15
16 **VIII. THIRD CLAIM**
17 **Unruh Civil Rights Act**
18 **(The Whole Foods Facility)**

19 53. Johnson incorporates the allegations contained in paragraphs 1 through 52 for this
20 claim.

21 54. California Civil Code § 51 states, in part, that: All persons within the jurisdiction
22 of this state are entitled to the full and equal accommodations, advantages, facilities,
23 privileges, or services in all business establishments of every kind whatsoever.

24 55. California Civil Code § 51.5 also states, in part, that: No business establishment
25 of any kind whatsoever shall discriminate against any person in this state because of the
26 disability of the person.

1 56. California Civil Code § 51(f) specifically incorporates (by reference) an
2 individual's rights under the ADA into the Unruh Act.

3 57. The Whole Foods Defendants' aforementioned acts and omissions denied the
4 physically disabled public--including Johnson--full and equal accommodations, advantages,
5 facilities, privileges and services in a business establishment (because of their physical
6 disability).

7 58. These acts and omissions (including the ones that violate the ADA) denied, aided
8 or incited a denial, or discriminated against Johnson by violating the Unruh Act.

9 59. Johnson was damaged by the Whole Foods Defendants' wrongful conduct, and
10 seeks statutory minimum damages of four thousand dollars (\$4,000) *for each offense*.

11 60. Johnson also seeks to enjoin the Whole Foods Defendants from violating the
12 Unruh Act (and ADA), and recover reasonable attorneys' fees and costs incurred under
13 California Civil Code § 52(a).

14
15
16 **IX. FOURTH CLAIM**
17 **Denial of Full and Equal Access to Public Facilities**
18 **(The Whole Foods Facility)**

19 61. Johnson incorporates the allegations contained in paragraphs 1 through 60 for this
20 claim.

21 62. Health and Safety Code § 19955(a) states, in part, that: California public
22 accommodations or facilities (built with private funds) shall adhere to the provisions of
23 Government Code § 4450.

24 63. Health and Safety Code § 19959 states, in part, that: Every existing (non-exempt)
25 public accommodation constructed prior to July 1, 1970, which is altered or structurally
26 repaired, is required to comply with this chapter.

27 64. Johnson alleges the Whole Foods Facility is a public accommodation constructed,

1 altered, or repaired in a manner that violates Part 5.5 of the Health and Safety Code or
 2 Government Code § 4450 (or both), and that the Whole Foods Facility was not exempt under
 3 Health and Safety Code § 19956.

4 65. The Whole Foods Defendants' non-compliance with these requirements at the
 5 Whole Foods Facility aggrieved (or potentially aggrieved) Johnson and other persons with
 6 physical disabilities. Accordingly, she seeks injunctive relief and attorney fees pursuant to
 7 Health and Safety Code § 19953.

8
 9 **X. FIFTH CLAIM**
 10 **Americans with Disabilities Act of 1990**
 11 ***Denial of "Full and Equal" Enjoyment and Use***
 12 **(The Rite Aid Facility)**

13 66. Johnson incorporates the allegations contained in paragraphs 1 through 65 for this
 14 claim.

15 67. Title III of the ADA holds as a "general rule" that no individual shall be
 16 discriminated against on the basis of disability in the full and equal enjoyment (or use) of
 17 goods, services, facilities, privileges, and accommodations offered by any person who owns,
 18 operates, or leases a place of public accommodation. 42 U.S.C. § 12182(a).

19 68. The Rite Aid Defendants discriminated against Johnson by denying "full and
 20 equal enjoyment" and use of the goods, services, facilities, privileges or accommodations of
 21 the Rite Aid Facility during each visit and each incident of deterrence.

22 ***Failure to Remove Architectural Barriers in an Existing Facility***

23 69. The ADA specifically prohibits failing to remove architectural barriers, which are
 24 structural in nature, in existing facilities where such removal is readily achievable. 42 U.S.C.
 25 § 12182(b)(2)(A)(iv). The term "readily achievable" is defined as "easily accomplishable and
 26 able to be carried out without much difficulty or expense." *Id.* § 12181(9).

27 70. When an entity can demonstrate that removal of a barrier is not readily

1 achievable, a failure to make goods, services, facilities, or accommodations available through
 2 alternative methods is also specifically prohibited if these methods are readily achievable. *Id.*
 3 § 12182(b)(2)(A)(v).

4 71. Here, Johnson alleges that the Rite Aid Defendants can easily remove the
 5 architectural barriers at the Rite Aid Facility without much difficulty or expense, and that the
 6 Rite Aid Defendants violated the ADA by failing to remove those barriers, when it was
 7 readily achievable to do so.

8 72. In the alternative, if it was not “readily achievable” for the Rite Aid Defendants to
 9 remove the Rite Aid Facility’s barriers, then the Rite Aid Defendants violated the ADA by
 10 failing to make the required services available through alternative methods, which are readily
 11 achievable.

12
 13 ***Failure to Design and Construct an Accessible Facility***

14 73. On information and belief, the Rite Aid Facility was designed or constructed (or
 15 both) after January 26, 1992--independently triggering access requirements under Title III of
 16 the ADA.

17 74. The ADA also prohibits designing and constructing facilities for first occupancy
 18 after January 26, 1993, that aren’t readily accessible to, and usable by, individuals with
 19 disabilities when it was structurally practicable to do so. 42 U.S.C. § 12183(a)(1).

20 75. Here, the Rite Aid Defendants violated the ADA by designing or constructing (or
 21 both) the Rite Aid Facility in a manner that was not readily accessible to the physically
 22 disabled public--including Johnson--when it was structurally practical to do so.

23 ***Failure to Make an Altered Facility Accessible***

24 76. On information and belief, the Rite Aid Facility was modified after January 26,
 25 1992, independently triggering access requirements under the ADA.

26 77. The ADA also requires that facilities altered in a manner that affects (or could

1 affect) its usability must be made readily accessible to individuals with disabilities to the
 2 maximum extent feasible. 42 U.S.C. § 12183(a)(2). Altering an area that contains a facility's
 3 primary function also requires adding making the paths of travel, bathrooms, telephones, and
 4 drinking fountains serving that area accessible to the maximum extent feasible. *Id.*

5 78. Here, the Rite Aid Defendants altered the Rite Aid Facility in a manner that
 6 violated the ADA and was not readily accessible to the physically disabled public--including
 7 Johnson--to the maximum extent feasible.

8
 9 ***Failure to Modify Existing Policies and Procedures***

10 79. The ADA also requires reasonable modifications in policies, practices, or
 11 procedures, when necessary to afford such goods, services, facilities, or accommodations to
 12 individuals with disabilities, unless the entity can demonstrate that making such
 13 modifications would fundamentally alter their nature. 42 U.S.C. § 12182(b)(2)(A)(ii).

14 80. Here, the Rite Aid Defendants violated the ADA by failing to make reasonable
 15 modifications in policies, practices, or procedures at the Rite Aid Facility, when these
 16 modifications were necessary to afford (and would not fundamentally alter the nature of)
 17 these goods, services, facilities, or accommodations.

18 81. Johnson seeks all relief available under the ADA (*i.e.*, injunctive relief, attorney
 19 fees, costs, legal expense) for these aforementioned violations. 42 U.S.C. § 12205.

20 82. Johnson also seeks a finding from this Court (*i.e.*, declaratory relief) that the Rite
 21 Aid Defendants violated the ADA in order to pursue damages under California's Unruh Civil
 22 Rights Act or Disabled Persons Act.

23
 24 **XI. SIXTH CLAIM**
 25 **Disabled Persons Act**
 26 **(The Rite Aid Facility)**

27 83. Johnson incorporates the allegations contained in paragraphs 1 through 82 for this

1 claim.

2 84. California Civil Code § 54 states, in part, that: Individuals with disabilities have
3 the same right as the general public to the full and free use of the streets, sidewalks,
4 walkways, public buildings and facilities, and other public places.

5 85. California Civil Code § 54.1 also states, in part, that: Individuals with disabilities
6 shall be entitled to full and equal access to accommodations, facilities, telephone facilities,
7 places of public accommodation, and other places to which the general public is invited.

8 86. Both sections specifically incorporate (by reference) an individual's rights under
9 the ADA. *See* Civil Code § § 54(c) and 54.1 (d).

10 87. Here, the Rite Aid Defendants discriminated against the physically disabled
11 public--including Johnson--by denying them full and equal access to the Rite Aid Facility.
12 The Rite Aid Defendants also violated Johnson's rights under the ADA, and, therefore,
13 infringed upon or violated (or both) Johnson's rights under the Disabled Persons Act.

14 88. *For each offense* of the Disabled Persons Act, Johnson seeks actual damages
15 (both general and special damages), statutory minimum damages of one thousand dollars
16 (\$1,000), declaratory relief, and any other remedy available under California Civil Code §
17 54.3.

18 89. She also seeks to enjoin the Rite Aid Defendants from violating the Disabled
19 Persons Act (and ADA) under California Civil Code § 55, and to recover reasonable
20 attorneys' fees and incurred under California Civil Code §§ 54.3 and 55.

21
22
23 **XII. SEVENTH CLAIM**
24 **Unruh Civil Rights Act**
(The Rite Aid Facility)

25 90. Johnson incorporates the allegations contained in paragraphs 1 through 89 for this
26 claim.

1 91. California Civil Code § 51 states, in part, that: All persons within the jurisdiction
2 of this state are entitled to the full and equal accommodations, advantages, facilities,
3 privileges, or services in all business establishments of every kind whatsoever.

4 92. California Civil Code § 51.5 also states, in part, that: No business establishment
5 of any kind whatsoever shall discriminate against any person in this state because of the
6 disability of the person.

7 93. California Civil Code § 51(f) specifically incorporates (by reference) an
8 individual's rights under the ADA into the Unruh Act.

9 94. The Rite Aid Defendants' aforementioned acts and omissions denied the
10 physically disabled public-including Johnson-full and equal accommodations, advantages,
11 facilities, privileges and services in a business establishment (because of their physical
12 disability).

13 95. These acts and omissions (including the ones that violate the ADA) denied, aided
14 or incited a denial, or discriminated against Johnson by violating the Unruh Act.

15 96. Johnson was damaged by the Rite Aid Defendants' wrongful conduct, and seeks
16 statutory minimum damages of four thousand dollars (\$4,000) *for each offense*.

17 97. Johnson also seeks to enjoin the Rite Aid Defendants from violating the Unruh
18 Act (and ADA), and recover reasonable attorneys' fees and costs incurred under California
19 Civil Code § 52(a).
20

21
22 **XIII. EIGHTH CLAIM**
23 **Denial of Full and Equal Access to Public Facilities**
24 **(The Rite Aid Facility)**

25 98. Johnson incorporates the allegations contained in paragraphs 1 through 97 for this
26 claim.

27 99. Health and Safety Code § 19955(a) states, in part, that: California public

28 Complaint for Preliminary and Permanent Injunctive Relief and Damages: Denial of Civil Rights and Access to
Public Facilities to Physically Disabled Persons, Per Federal and California Statutes (Including Civil Code §§ 51,
52, 54, 54.1, 54.3, and § 55; and Health & Safety Code §§ 19955 et seq.); Injunctive Relief Per Title III, Americans
with Disabilities Act of 1990

1 accommodations or facilities (built with private funds) shall adhere to the provisions of
2 Government Code § 4450.

3 100. Health and Safety Code § 19959 states, in part, that: Every existing (non-
4 exempt) public accommodation constructed prior to July 1, 1970, which is altered or
5 structurally repaired, is required to comply with this chapter.

6 101. Johnson alleges the Rite Aid Facility is a public accommodation constructed,
7 altered, or repaired in a manner that violates Part 5.5 of the Health and Safety Code or
8 Government Code § 4450 (or both), and that the Rite Aid Facility was not exempt under
9 Health and Safety Code § 19956.

10 102. The Rite Aid Defendants' non-compliance with these requirements at the Rite
11 Aid Facility aggrieved (or potentially aggrieved) Johnson and other persons with physical
12 disabilities. Accordingly, she seeks injunctive relief and attorney fees pursuant to Health and
13 Safety Code § 19953.

14
15 **XIV. NINTH CLAIM**
16 **Americans with Disabilities Act of 1990**
17 ***Denial of "Full and Equal" Enjoyment and Use***
(The Mall Facility)

18 103. Johnson incorporates the allegations contained in paragraphs 1 through 102 for
19 this claim.

20 104. Title III of the ADA holds as a "general rule" that no individual shall be
21 discriminated against on the basis of disability in the full and equal enjoyment (or use) of
22 goods, services, facilities, privileges, and accommodations offered by any person who owns,
23 operates, or leases a place of public accommodation. 42 U.S.C. § 12182(a).

24 105. The Cornerstone of Los Gatos Defendants discriminated against Johnson by
25 denying "full and equal enjoyment" and use of the goods, services, facilities, privileges or
26 accommodations of the Mall Facility during each visit and each incident of deterrence.

27
28 Complaint for Preliminary and Permanent Injunctive Relief and Damages: Denial of Civil Rights and Access to
Public Facilities to Physically Disabled Persons, Per Federal and California Statutes (Including Civil Code §§ 51,
52, 54, 54.1, 54.3, and § 55; and Health & Safety Code §§ 19955 et seq.); Injunctive Relief Per Title III, Americans
with Disabilities Act of 1990

1 ***Failure to Remove Architectural Barriers in an Existing Facility***

2 106. The ADA specifically prohibits failing to remove architectural barriers, which
3 are structural in nature, in existing facilities where such removal is readily achievable. 42
4 U.S.C. § 12182(b)(2)(A)(iv). The term “readily achievable” is defined as “easily
5 accomplishable and able to be carried out without much difficulty or expense.” *Id.* §
6 12181(9).

7 107. When an entity can demonstrate that removal of a barrier is not readily
8 achievable, a failure to make goods, services, facilities, or accommodations available through
9 alternative methods is also specifically prohibited if these methods are readily achievable. *Id.*
10 § 12182(b)(2)(A)(v).

11 108. Here, Johnson alleges that the Entire Brea Mall Defendants can easily remove
12 the architectural barriers at the Mall Facility without much difficulty or expense, and that the
13 Cornerstone of Los Gatos Defendants violated the ADA by failing to remove those barriers,
14 when it was readily achievable to do so.

15 109. In the alternative, if it was not “readily achievable” for the Cornerstone of Los
16 Gatos to remove the Mall Facility’s barriers, then the Cornerstone of Los Gatos Defendants
17 violated the ADA by failing to make the required services available through alternative
18 methods, which are readily achievable.

19 ***Failure to Design and Construct an Accessible Facility***

20 110. On information and belief, the Mall Facility was designed or constructed (or
21 both) after January 26, 1992--independently triggering access requirements under Title III of
22 the ADA.

23 111. The ADA also prohibits designing and constructing facilities for first occupancy
24 after January 26, 1993, that aren’t readily accessible to, and usable by, individuals with
25 disabilities when it was structurally practicable to do so. 42 U.S.C. § 12183(a)(1).

26 112. Here, the Mall Defendants violated the ADA by designing or constructing (or
27

1 both) the Mall Facility in a manner that was not readily accessible to the physically disabled
2 public--including Johnson--when it was structurally practical to do so.³¹

3
4 ***Failure to Make an Altered Facility Accessible***

5 113. On information and belief, the Mall Facility was modified after January 26,
6 1992, independently triggering access requirements under the ADA.

7 114. The ADA also requires that facilities altered in a manner that affects (or could
8 affect) its usability must be made readily accessible to individuals with disabilities to the
9 maximum extent feasible. 42 U.S.C. § 12183(a)(2). Altering an area that contains a facility's
10 primary function also requires adding making the paths of travel, bathrooms, telephones, and
11 drinking fountains serving that area accessible to the maximum extent feasible. *Id.*

12 115. Here, the Cornerstone of Los Gatos Defendants altered the Mall Facility in a
13 manner that violated the ADA and was not readily accessible to the physically disabled
14 public--including Johnson--to the maximum extent feasible.

15 ***Failure to Modify Existing Policies and Procedures***

16 116. The ADA also requires reasonable modifications in policies, practices, or
17 procedures, when necessary to afford such goods, services, facilities, or accommodations to
18 individuals with disabilities, unless the entity can demonstrate that making such
19 modifications would fundamentally alter their nature. 42 U.S.C. § 12182(b)(2)(A)(ii).

20 117. Here, the Cornerstone of Los Gatos Defendants violated the ADA by failing to
21 make reasonable modifications in policies, practices, or procedures at the Mall Facility, when
22 these modifications were necessary to afford (and would not fundamentally alter the nature
23 of) these goods, services, facilities, or accommodations.

24 118. Johnson seeks all relief available under the ADA (*i.e.*, injunctive relief, attorney
25 fees, costs, legal expense) for these aforementioned violations. 42 U.S.C. § 12205.

26 119. Johnson also seeks a finding from this Court (*i.e.*, declaratory relief) that the
27

1 Cornerstone of Los Gatos Defendants violated the ADA in order to pursue damages under
2 California's Unruh Civil Rights Act or Disabled Persons Act.

3
4
5 **XV. TENTH CLAIM**
6 **Disabled Persons Act**
7 **(The Mall Facility)**

8 120. Johnson incorporates the allegations contained in paragraphs 1 through 119 for
9 this claim.

10 121. California Civil Code § 54 states, in part, that: Individuals with disabilities have
11 the same right as the general public to the full and free use of the streets, sidewalks,
12 walkways, public buildings and facilities, and other public places.

13 122. California Civil Code § 54.1 also states, in part, that: Individuals with disabilities
14 shall be entitled to full and equal access to accommodations, facilities, telephone facilities,
15 places of public accommodation, and other places to which the general public is invited.

16 123. Both sections specifically incorporate (by reference) an individual's rights under
17 the ADA. *See* Civil Code §§ 54(c) and 54.1 (d).

18 124. Here, the Cornerstone of Los Gatos Defendants discriminated against the
19 physically disabled public--including Johnson--by denying them full and equal access to the
20 Mall Facility. The Cornerstone of Los Gatos Defendants also violated Johnson's rights under
21 the ADA, and, therefore, infringed upon or violated (or both) Johnson's rights under the
22 Disabled Persons Act.

23 125. For each offense of the Disabled Persons Act, Johnson seeks actual damages
24 (both general and special damages), statutory minimum damages of one thousand dollars
25 (\$1,000), declaratory relief, and any other remedy available under California Civil Code §
26 54.3.

27 126. She also seeks to enjoin the Mall Defendants from violating the Disabled

28 Complaint for Preliminary and Permanent Injunctive Relief and Damages: Denial of Civil Rights and Access to
Public Facilities to Physically Disabled Persons, Per Federal and California Statutes (Including Civil Code §§ 51,
52, 54, 54.1, 54.3, and § 55; and Health & Safety Code §§ 19955 et seq.); Injunctive Relief Per Title III, Americans
with Disabilities Act of 1990

Persons Act (and ADA) under California Civil Code § 55, and to recover reasonable attorneys' fees and incurred under California Civil Code §§ 54.3 and 55.

XVI. ELEVENTH CLAIM
Unruh Civil Rights Act
(The Mall Facility)

127. Johnson incorporates the allegations contained in paragraphs 1 through 126 for this claim.

128. California Civil Code § 51 states, in part, that: All persons within the jurisdiction of this state are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever.

129. California Civil Code § 51.5 also states, in part, that: No business establishment of any kind whatsoever shall discriminate against any person in this state because of the disability of the person.

130. California Civil Code § 51(f) specifically incorporates (by reference) an individual's rights under the ADA into the Unruh Act.

131. The Cornerstone of Los Gatos Defendants' aforementioned acts and omissions denied the physically disabled public--including Johnson--full and equal accommodations, advantages, facilities, privileges and services in a business establishment (because of their physical disability).

132. These acts and omissions (including the ones that violate the ADA) denied, aided or incited a denial, or discriminated against Johnson by violating the Unruh Act.

133. Johnson was damaged by the Cornerstone of Los Gatos Defendants' wrongful conduct, and seeks statutory minimum damages of four thousand dollars (\$4,000) *for each offense*.

134. Johnson also seeks to enjoin the Cornerstone of Los Gatos Defendants from violating the Unruh Act (and ADA), and recover reasonable attorneys' fees and costs incurred under California Civil Code § 52(a).

XVII. TWELFTH CLAIM
Denial of Full and Equal Access to Public Facilities
(The Mall Facility)

135. Johnson incorporates the allegations contained in paragraphs 1 through 134 for this claim.

136. Health and Safety Code § 19955(a) states, in part, that: California public accommodations or facilities (built with private funds) shall adhere to the provisions of Government Code § 4450.

137. Health and Safety Code § 19959 states, in part, that: Every existing (non-exempt) public accommodation constructed prior to July 1, 1970, which is altered or structurally repaired, is required to comply with this chapter.

138. Johnson alleges the Mall Facility is a public accommodation constructed, altered, or repaired in a manner that violates Part 5.5 of the Health and Safety Code or Government Code § 4450 (or both), and that the Mall Facility was not exempt under Health and Safety Code § 19956.

139. The Mall Defendants' non-compliance with these requirements at the Mall Facility aggrieved (or potentially aggrieved) Johnson and other persons with physical disabilities. Accordingly, she seeks injunctive relief and attorney fees pursuant to Health and Safety Code § 19953.

PRAYER FOR RELIEF

WHEREFORE, Johnson prays judgment against the Whole Foods Defendants for:

Complaint for Preliminary and Permanent Injunctive Relief and Damages: Denial of Civil Rights and Access to Public Facilities to Physically Disabled Persons, Per Federal and California Statutes (Including Civil Code §§ 51, 52, 54, 54.1, 54.3, and § 55; and Health & Safety Code §§ 19955 et seq.); Injunctive Relief Per Title III, Americans with Disabilities Act of 1990

1 1. Injunctive relief, preventive relief, or any other relief the Court deems proper.

2 2. Declaratory relief that the Whole Foods violated the ADA for the purposes of
3 Unruh Act or Disabled Persons Act damages.

4 3. Statutory minimum damages under either sections 52(a) or 54.3(a) of the California
5 Civil Code (but not both) according to proof.

6 4. Attorneys' fees, litigation expenses, and costs of suit.

7 5. Interest at the legal rate from the date of the filing of this action.

8
9
10 **PRAYER FOR RELIEF**

11 WHEREFORE, Johnson prays judgment against the Rite Aid Defendants for:

12 1. Injunctive relief, preventive relief, or any other relief the Court deems proper.

13 2. Declaratory relief that the Rite Aid Defendants violated the ADA for the purposes
14 of Unruh Act or Disabled Persons Act damages.

15 3. Statutory minimum damages under either sections 52(a) or 54.3(a) of the California
16 Civil Code (but not both) according to proof.

17 4. Attorneys' fees, litigation expenses, and costs of suit.

18 5. Interest at the legal rate from the date of the filing of this action.

19
20
21 **PRAYER FOR RELIEF**

22 WHEREFORE, Johnson prays judgment against the Cornerstone of Los Gatos
23 Defendants for:

24 1. Injunctive relief, preventive relief, or any other relief the Court deems proper.

25 2. Declaratory relief that the Cornerstone of Los Gatos Defendants violated the ADA
26 for the purposes of Unruh Act or Disabled Persons Act damages.

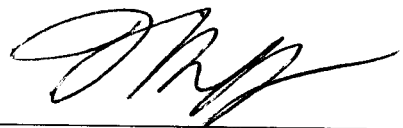
27
28 Complaint for Preliminary and Permanent Injunctive Relief and Damages: Denial of Civil Rights and Access to
Public Facilities to Physically Disabled Persons, Per Federal and California Statutes (Including Civil Code §§ 51,
52, 54, 54.1, 54.3, and § 55; and Health & Safety Code §§ 19955 et seq.); Injunctive Relief Per Title III, Americans
with Disabilities Act of 1990

1 3. Statutory minimum damages under either sections 52(a) or 54.3(a) of the California
2 Civil Code (but not both) according to proof.

3 4. Attorneys' fees, litigation expenses, and costs of suit.

4 5. Interest at the legal rate from the date of the filing of this action.


5
6
7
8 Dated: 01-22-13


Irene Karbelashvili, Attorney for
Plaintiff Richard Johnson

9
10
11
12 **DEMAND FOR JURY**

13
14 Plaintiff hereby demands a jury for all claims for which a jury is permitted.

15
16 Dated: 01-22-13


Irene Karbelashvili, Attorney for
Plaintiff Richard Johnson